

October 15, 2015

VIA ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Stephanie A. Joyce

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Re: Notice of Permitted *Ex Parte* Meeting, WC Docket No. 12-375

Dear Ms. Dortch:

On October 13, 2015, Securus Technologies, Inc. (“Securus”), represented by Richard Smith, Chief Executive Officer, Dennis Reinhold, Vice President and General Counsel, and the undersigned counsel, met with the following persons:

Suzanne Tetrault, Deputy General Counsel
David Gossett, Deputy General Counsel
Richard Mallen, Office of General Counsel

The purpose of the meeting was to discuss the Fact Sheet released September 30, 2015, in this docket which summarized the draft order presented to the Commissioners on that day.

Foam-backed versions of the attached document entitled “Basis of Appeal – FCC ‘Fact’ Sheet Order” were distributed, along with copies of the AJA Alert (dated October 2, 2015) which is also attached hereto.

Securus explained that, if adopted, the rates and rules in the Fact Sheet could be “a business-ending event” for the company. Under the rate caps listed in the Fact Sheet, there being no rules in the draft order that address site commissions, Securus may be forced to continue paying site commissions on all existing contracts, even though the draft rate caps are significantly below Securus’s cost to provide service. Securus currently pays approximately \$140 million of site commissions on local and intrastate ICS.

Securus also explained that the Commission has the authority and discretion to determine what are recoverable costs and the degree to which they are recovered. The record in this proceeding proves beyond a doubt that site commissions are a cost to ICS providers and an unavoidable market reality. To adopt rate caps set below Securus’s average, per-minute costs (reported, as the Commission required, without site commissions) and then to adopt no rules to govern the

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payment or recovery of site commissions would not satisfy any applicable ratemaking standard. That order would not be reasonable.

A site commission recovery mechanism is thus within the Commission's jurisdiction and authority to adopt, and the record provides the Commission with data sufficient to adopt a reasonable recovery amount. Securus provided Ms. Tetrault with a paper copy of its Second Ex Parte Submission (dated October 8, 2015) (Public Version) which includes a table created by Stephen E. Siwek, Economists, Inc., analyzing the data in the record regarding a per-minute, additive rate component for site commissions.

The Commission enjoys the highest possible deference when weighing cost evidence and determining what a particular rate, or rate component, should be. The proposal of Andrew D. Lipman,¹ depicted in the Siwek table, is an eminently reasonable and workable maximum, additive, per-minute rate to replace the existing site commission construct.

The draft rate caps and rules as stated in the Fact Sheet are in many respects below Securus's costs. The site commission recovery mechanism is, however, the most crucial part of the forthcoming order. Securus stated that unless the Commission adopts the capped, per-minute, additive rate mechanism for site commission recovery much like the Lipman proposal, and does not decrease the draft rate caps and fees any further, it will appeal the forthcoming order in full. Many other ICS providers will appeal as well.

This disclosure is made in compliance with 47 C.F.R. § 1.1206(a)(1).

Please do not hesitate to contact me with any questions: 202.857.6081.

Sincerely,

s/Stephanie A. Joyce

Counsel to Securus Technologies, Inc.

Attachments

Cc: Gigi Sohn, Counselor to Chairman Wheeler
Rebekah Goodheart, Legal Advisor to Commissioner Clyburn
Jonathan Sallet, General Counsel

¹ WC Docket No. 12-375, Letter from Andrew D. Lipman to Marlene H. Dortch, Ex. A at 3-4 (filed Sept. 28, 2015).

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Suzanne Tetrault, Deputy General Counsel
David Gossett, Deputy General Counsel
Pamela Arluk, Chief, Pricing Policy Division, Wireline Competition Bureau
Lynne Engledow, Acting Deputy Chief of the Pricing Policy Division, Wireline
Competition Bureau

All via electronic mail

Basis of Appeal – FCC "Fact" Sheet Order

Issue	Description/Comments	Legal Basis of Appeal																														
1) Commissions	<ul style="list-style-type: none">FCC should specifically allow commissions as an adder – See NSA ProposalFact Sheet "strongly discourages use of commissions" = No impact, commissions still demandedFCC recognized "commission payments are significant factor in driving excessive rates"	<ul style="list-style-type: none">Commissions must be considered a legitimate cost of serviceArbitrary and capricious – does not account for all costsFCC not taking action is confiscatory – does not allow costs to be included																														
2) Setting Rates Below Cost	<table><tr><td></td><td><u>ADP</u></td><td><u>FCC</u></td><td><u>Prepaid Securus Cap</u></td><td><u>Variance</u></td></tr><tr><td>DOCs</td><td></td><td>11¢</td><td>8¢</td><td>+38%</td></tr><tr><td>+1000</td><td></td><td>14¢</td><td>15¢</td><td>(7%)</td></tr><tr><td>350 – 999</td><td></td><td>16¢</td><td>19¢</td><td>(16%)</td></tr><tr><td>0 – 349</td><td></td><td><u>22¢</u></td><td><u>32¢</u></td><td>(31%)</td></tr><tr><td>Average</td><td></td><td>16¢</td><td>19¢</td><td>(16%)</td></tr></table>		<u>ADP</u>	<u>FCC</u>	<u>Prepaid Securus Cap</u>	<u>Variance</u>	DOCs		11¢	8¢	+38%	+1000		14¢	15¢	(7%)	350 – 999		16¢	19¢	(16%)	0 – 349		<u>22¢</u>	<u>32¢</u>	(31%)	Average		16¢	19¢	(16%)	<ul style="list-style-type: none">Caps are confiscatoryFCC Fact Sheet rates are below costsArbitrary and capricious – does not account for all costsLacks jurisdiction
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3) Fees	<ul style="list-style-type: none">Fact Sheet Fees priced below costsDisregarded Industry Proposal to cap and eliminate fees	<ul style="list-style-type: none">Capped fees are confiscatory – does not account for all costsArbitrary and capricious – no rational basis for allowing some fees and rejecting othersLacks jurisdiction																														

Recommended Solution(s)

- Allow commissions at a capped rate per minute that is additive to price caps.



....AJAlert
October 2, 2015

FCC proposed tiered ICS rates for jails; commissions allowed

Yesterday, the Federal Communications Commission outlined its intent to move forward with Inmate Calling Services (ICS) reform, capping rates and limiting or banning fees on calls. The vote will take place at the Commission's October 22 Open Meeting.

[Click here for a 'Fact Sheet' explaining the Commission's intended key reforms.](#) The major proposals in front of the FCC commissioners are:



- Rate for all prisons of 11 cents a minute
- Tiered rate for jails depending on size of the jails with rates for debit or prepaid calls as follows:
 - 14 cents a minute for jails with more than 1000 inmates
 - 16 cents a minute for Jails with 350 to 999.
 - 22 cents a minute for jails with up to 349 inmates.
 - The rate for collect calls will be at 49 cents, regardless of the size of the jail.
- Rates are for Interstate and Intrastate calls
- Site commissions are "discouraged" but not restricted if such payments by ICS providers fit within the rate caps. This is a 180 degree reversal of where we began our discussions with the FCC on the ICS issue. We believe the FCC now better understands the need for facilities to recoup some costs directly related to ICS in jails.
- The transition period for the rates will be 90 days from when the order goes into effect. We had advocated for two budget cycles to allow agencies to adjust budgets accordingly. However, the FCC felt that because commissions will be allowed, the impact on budgets would not be adversely affected.
 - The elimination or caps on ancillary service charges.



AJA Executive Director Robert J. Kasabian spoke with Commissioner Clyburn's chief legal counsel yesterday about how the FCC arrived at the rates that are being proposed. We were told that the proposed rates were devised as a result of cost data submitted by the ICS providers.

While the advocates have already indicated their displeasure with the rate structure, they were pushing for rates of 4 and 5 cents a minute, we feel that the FCC moved in a direction that was favorable for jails.

The person we spoke with at the FCC said that without the input of AJA on this issue, the order likely would look a lot different. For that we are grateful to all AJA members that have worked with us in getting the FCC to understand the complexity of ICS and the implications

it has on local corrections.

In our filings with the FCC, we urged the agency to consider a tiered rate structure, separating jails from prisons in rate consideration, allowing for cost recovery or commissions, and a phase in period of two years. Transition period aside, we are pleased that the FCC heard our concerns and acted accordingly.

We urge you to comment to the FCC on this proposal by October 14 for your concerns to be reflected when the commissioners vote later this month. You can comment online at <http://apps.fcc.gov/ecfs/proceeding/view?name=12-375>. Or, feel free to contact AJA with your comments. Email Executive Director Kasabian at robert@aja.org.

Looking ahead, the FCC is also seeking a Third Further Notice of Proposed Rulemaking. Among the points to be considered will be video visitation and other advanced inmate communications services.

We will continue to follow the ICS issue as it evolves and keep our membership informed.

Contact: **Steve Custer, Director of Communications**
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stevec@aja.org | 301.790.3930 x13

